

SMV 1/3/06 15:06

3:05-CV-02387 PATERSON V. WAL-MART STORES INC

1

TRANCS.

SANDRA PATERSON,

Plaintiff,

vs.

WAL-MART STORES INC.,

Defendant.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION DISTRICT COURT
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
DEC 30 PM 2:51
BY *sm*
05 CV 2387 L
DEPUTY

No. 05-1049-CV-W-SOW

ORDER

AJB
ECF
DOCUMENT

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the Western District of Missouri.
Date Filed: 12/5/2005

P.L. BRUNE, CLERK

Deanne Beard
Deputy Clerk

Pending before the Court is Defendant Wal-Mart Stores, Inc.'s Motion to Stay (Doc. # 9) and Defendant Wal-Mart Stores, Inc.'s Motion to Transfer (Doc. # 5). For the reasons stated below, defendant's motion to stay is dismissed as moot and defendant's motion to transfer is granted.

On June 30, 2005 Metabolife International filed a Chapter 11 petition under Title 11 of the United States Code (Bankruptcy Code) in the United States Bankruptcy Court for the Southern District of California. The instant case was filed on August 26, 2005 in the Circuit Court of Jackson County, Missouri against Wal-Mart Stores, Inc. ("Wal-Mart"). Wal-Mart removed the case to this Court on October 28, 2005.

The plaintiff, Sandra Paterson, seeks monetary redress resulting from her alleged purchase, and use, of Metabolife 356, a product manufactured by Metabolife. Plaintiff has asserted claims of negligence and strict liability for product defect and failure to warn against Wal-Mart. Plaintiff further claims that the product allegedly purchased and consumed was marketed, promoted, distributed or sold by Wal-Mart. Defendant Wal-Mart informs the Court that because Metabolife manufactured the product in question, it has a contractual and equitable

obligation to defend, indemnify and hold Wal-Mart harmless from certain claims, including those asserted in this action and therefore the outcome of this action could have an effect on the estate being administered in bankruptcy.

On September 16, 2005, Metabolife filed a petition under 28 U.S.C. § 157(b)(5) for an order transferring approximately 162 personal injury or wrongful death actions pending against Metabolife and defendants, or other non-debtor defendants to the United States District Court for the Southern District of California. A hearing was held on that motion on October 24, 2005. On November 18, 2005, the Honorable Irma E. Gonzalez granted the petition. Judge Gonzalez has ordered the immediate transfer of all personal injury or wrongful death Metabolife ephedra actions pending in jurisdictions across the country to the Southern District of California.

Wal-Mart now seeks transfer of this case to the United States District Court for the Southern District of California based on 28 U.S.C. § 1404(a). This provision provides that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). The purpose of Section 1404(a) is to avoid the waste of time, energy, and money to safeguard litigants, witnesses and the public against inconvenience and expense. See Insured Accounts Co. Inc. v. Am. Modern Home Ins. Co., 1988 U.S. Dist. LEXIS 10282, *7 (W.D. Mo. Sept. 14, 1988). “The moving party has the burden of proving that the transfer will be to a more convenient forum.” Id. at *2. The party seeking transfer must show that: (1) venue is proper in both the transferor and the transferee Court; (2) transfer is for the convenience of the parties and witnesses and; (3) transfer is in the interest of justice. See Terra Intl. v. Miss. Chem. Corp., 119 F.3d 688, 696 (8th Cir. 1997).

In this case, the Court finds that transfer to the Southern District of California is warranted. First, venue is proper in the Southern District of California because the case is "related to" the Metabolife bankruptcy proceeding pending in the Bankruptcy Court in that District. See 28 U.S.C. § 1409(a). Although Metabolife is not a defendant, Wal-Mart will have a claim for indemnity under its agreement with Metabolife - a claim which could affect the administration of the estate and Metabolife's obligations as the debtor. Second, defendant Wal-Mart has demonstrated that transfer is for the convenience fo the parties and witnesses. The majority of documentation and well as the witnesses in this case would be at the Metabolife headquarters in California or in the Metabolife document depository in Southern California. Finally, transfer is in the interest of justice. Approximately 162 state court actions across the United States concerning the Metabolife product are the subject of removal or transfer motions to the Southern District of California. The transfer of this case will contribute to efficient and consistent outcomes. Accordingly, this Court finds that venue in the Southern District of California is appropriate.

Along with the present motion to transfer, Wal-Mart filed a motion to stay all proceedings in this Court pending this Court's decision whether to grant Wal-Mart's motion to transfer. Since this Court has decided to grant Wal-Mart's motion to transfer, its motion to stay proceedings in this case pending transfer is dismissed as moot.

Accordingly, it is hereby

ORDERED that scheduling teleconference set for December 15, 2005, in this court is cancelled. It is further

ORDERED that Defendant Wal-Mart Stores, Inc.'s Motion to Stay (Doc. # 9) is

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dismissed as moot. It is further

ORDERED that Defendant Wal-Mart Stores, Inc.'s Motion to Transfer (Doc. # 5) is granted. This case is transferred to the United States District Court for the Southern District of California for all further proceedings.

/s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated: 12-5-05

CLOSED, EAPADMIN

**U.S. District Court
Western District of Missouri (Kansas City)
CIVIL DOCKET FOR CASE #: 4:05-cv-01049-SOW**

Paterson v. Wal-Mart Stores Inc
Assigned to: District Judge Scott O. Wright
Demand: \$75,000
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 10/27/2005
Jury Demand: Defendant
Nature of Suit: 365 Personal Inj. Prod. Liability
Jurisdiction: Diversity

Plaintiff

Sandra Paterson

represented by **Bradley D. Kuhlman**
Evans & Kuhlman, LLC
105 East 5th Street
Suite 102
Kansas City, MO 64106
(816) 799-0330
Fax: (816)799-0336
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

**ECF
DOCUMENT**

I hereby attest and certify this is a printed copy of a
document which was electronically filed with the United States
District Court for the Western District of Missouri

Date Filed: 12/27/05

P.L. BRUNE, CLERK

By: Shelene Beard, Deputy Clerk

Thomas J Pruess
WAGSTAFF & CARTMELL, LLP
4740 Grand Avenue
Suite 300
Kansas City, MO 64112
816-701-1100
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Wal-Mart Stores Inc

represented by **Mark C Hegarty**
Shook Hardy & Bacon LLP-Grand
2555 Grand Boulevard
Kansas City, MO 64108-2613
816-474-6550
Fax: 816-421-5547
Email: mhegarty@shb.com
LEAD ATTORNEY
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Email: swest@shb.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/27/2005	<u>1</u>	NOTICE OF REMOVAL by Wal-Mart Stores Inc, Wal-Mart Stores Inc from Circuit Court of Jackson County, case number 0516-cv23765. (Filing fee \$ 250 receipt number 1118007) filed by Mark C Hegarty on behalf of Wal-Mart Stores Inc, Wal-Mart Stores Inc. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B)(Hegarty, Mark) (Entered: 10/27/2005)
10/27/2005	<u>2</u>	DISCLOSURE OF CORPORATE INTERESTS of <i>Defendant Wal-Mart Stores, Inc.</i> filed by Mark C Hegarty on behalf of Defendant Wal-Mart Stores Inc.(Hegarty, Mark) (Entered: 10/27/2005)
10/27/2005	<u>3</u>	ANSWER to Complaint with Jury Demand filed by Mark C Hegarty on behalf of Defendant Wal-Mart Stores Inc.(Hegarty, Mark) (Entered: 10/27/2005)
10/28/2005	<u>4</u>	Notice of EAP ADMINISTRATOR assignment. (Attachments: # <u>1</u> General Order)(Carr, Lori) (Entered: 10/28/2005)
11/04/2005	<u>5</u>	MOTION to reassign/transfer case filed by Sarah Elizabeth West on behalf of Wal-Mart Stores Inc Suggestions in opposition/response due by 11/21/2005 unless otherwise directed by the court (West, Sarah) (Entered: 11/04/2005)
11/04/2005	<u>6</u>	SUGGESTIONS in support re <u>5</u> MOTION to reassign/transfer case filed by Sarah Elizabeth West on behalf of Defendant Wal-Mart Stores Inc. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u>)(Related document(s) <u>5</u>) (West, Sarah) (Entered: 11/04/2005)

11/08/2005	<u>7</u>	NOTICE of filing by Wal-Mart Stores Inc re <u>5</u> MOTION to reassign/transfer case <i>Notice of Order in Further Support of Defendant Wal-Mart Stores, Inc's Motion to Transfer</i> (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C)(Hegarty, Mark) (Entered: 11/08/2005)
11/15/2005	<u>8</u>	SUGGESTIONS in opposition re <u>5</u> MOTION to reassign/transfer case filed by Chad Cameron Lucas on behalf of Plaintiff Sandra Paterson. Reply suggestions due by 11/30/2005 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>5</u>) (Lucas, Chad) (Entered: 11/15/2005)
11/15/2005	<u>9</u>	MOTION to stay filed by Sarah Elizabeth West on behalf of Wal-Mart Stores Inc Suggestions in opposition/response due by 11/30/2005 unless otherwise directed by the court (West, Sarah) (Entered: 11/15/2005)
11/15/2005	<u>10</u>	SUGGESTIONS in support re <u>9</u> MOTION to stay filed by Sarah Elizabeth West on behalf of Defendant Wal-Mart Stores Inc. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B)(Related document(s) <u>9</u>) (West, Sarah) Modified on 11/16/2005 to Delete Ex. B (proposed order), which was attached in error (Beard, Melanie). (Entered: 11/15/2005)
11/21/2005	<u>11</u>	RESPONSE to motion re <u>9</u> MOTION to stay filed by Chad Cameron Lucas on behalf of Plaintiff Sandra Paterson. Reply suggestions due by 12/6/2005 unless otherwise directed by the court (Related document(s) <u>9</u>) (Lucas, Chad) (Entered: 11/21/2005)
11/22/2005	<u>12</u>	ORDER setting sched. t/c for 12/15/05 beginning at 9:30 a.m. Signed by Judge Scott O. Wright on 11-22-05. (Morse, Judy) (Entered: 11/22/2005)
11/30/2005	<u>13</u>	REPLY SUGGESTIONS to motion re <u>5</u> MOTION to reassign/transfer case filed by Sarah Elizabeth West on behalf of Defendant Wal-Mart Stores Inc. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>5</u>) (West, Sarah) (Entered: 11/30/2005)
12/01/2005	<u>14</u>	REPLY SUGGESTIONS to motion re <u>9</u> MOTION to stay filed by Mark C Hegarty on behalf of Defendant Wal-Mart Stores Inc. (Related document(s) <u>9</u>) (Hegarty, Mark) (Entered: 12/01/2005)
12/05/2005	<u>15</u>	ORDER cancelling 12/15/05 sched. t/c in this court; granting <u>5</u> defendant's motion to transfer case to Southern District of California, dismissing as moot <u>9</u> defendant's motion to stay. Signed by Judge Scott O. Wright on 12-5-05. (Morse, Judy) (Entered: 12/05/2005)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
OFFICE OF THE CLERK

Patricia L. Brune
Clerk of Court

Reply To:
(x) 400 E. 9th Street
Kansas City, MO 64106
() 131 West High Street
Jefferson City, MO 65101
() 222 John Q. Hammons Pkwy.
Springfield, MO 65806

December 27, 2005

United States District Court
Southern District of California
880 Front, Ste. 4290
San Francisco, CA 92101-8900

'05 CV 2387 L

AJB

Re: Transfer of our Civil Case No. 05-1049-CV-W-SOW
Paterson v. Wal-Mart Stores Inc

Dear Clerk:

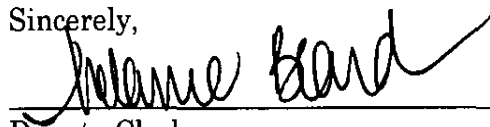
On 12/05/05, this Court signed an order transferring the above-entitled case to your court. Pursuant to our Administrative Directive No. 11, we delayed the transfer of this case for twenty-one (21) days. The case is now ready for transfer and you will find enclosed a certified copy of the transfer order.

Our court is a prototype court for electronic case filing. What that means is that we no longer have paper files and our "official court file" is on our electronic case filing web site. The attorneys and court users file their documents electronically via the internet in accordance with our "General Order" and "Procedures Manual" which is posted on the same web site.

You may access our electronic case file at the following web address: <http://ecf.mowd.uscourts.gov>. We have assigned a login and password for district courts to use in accessing this information. The login is "guestcrt" and the password is "guestcrt". This login and password should not be shared with anyone other than federal court personnel who would have a need to access our electronic case file system. You will need Adobe Acrobat reader loaded on your computer in order to view the documents.

In order to assist you in accessing our electronic file, we have prepared and attach to this letter a step-by-step guide to getting to our web site and accessing the electronic case file that is being transferred. If you need assistance, you may call the Kansas City office at 816/512-5000, the Jefferson City office at 573/636-4015 or the Springfield office at 417/865-3869.

Sincerely,

A handwritten signature in black ink, appearing to read "Elaine Band", written over a horizontal line.

Deputy Clerk

enc.

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Sandra Paterson

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Missouri
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

05 DEC 30 PM 2: 59

Wal-Mart Stores, IncCLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Missouri
(IN U.S. PLAINTIFF CASES ONLY)

BY:

DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Bradley D Kahlman
105 East 5th Street, ste 102
Kansas City MO 64106
(816)799-0330

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- (For Diversity Cases Only)
- | | PT | DEF | | PT | DEF |
|---|---|----------------------------|---|----------------------------|---|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 <i>sm</i> |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 <i>sm</i> | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28:1332 Diversity - Personal Injury 05cv2387L(AJB)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <i>sm</i> <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Electrant <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☒ 5 Transferred from another district (specify) *sm* ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

